

### **REMARKS**

Applicants reply to the final Office Action dated November 22, 2010. Claims 1-3, 5-7, 9-10, 12-14 and 18-29 are currently pending. Support for the amendments may be found in the originally-filed specification, claims, and figures. No new matter has been introduced by the amendments. Reconsideration of this application is respectfully requested.

The Examiner objects claim 2 as being indefinite due to the "and/or" recitation, and rejects claims 27-29 due to the informality with the word "portion". Applicants respectfully disagree; however, Applicants amend the claims to expedite prosecution and to clarify the patentable aspects of the claims. As such, Applicants assert that the rejections are now moot.

The Examiner rejects claims 1, 5-7, 9-10, 12-14 and 18-29 under 35 U.S.C. §102(b) as being anticipated by Porat (U.S. Patent 6,234,448). Applicants respectfully disagree and traverse.

For the Examiner to establish a *prima facie* case of anticipation under 35 U.S.C. §102, it is well settled that the Examiner must demonstrate "the presence in a single prior art reference disclosure of each and every element of the claimed invention, arranged as in the claim." *Lindemann Maschinenfabrik GmbH v. American Hoist & Derrick Co.*, 730 F.2d 1452, 1458 (Fed. Cir. 1984)(emphasis added). Applicants respectfully assert that the Official Action has met this test.

The Examiner asserts that Porat discloses a device that includes all the claimed structured features and is *capable of* being used as a surgical holder for grasping tissue. Specifically, the Examiner alleges that the "U-shaped opening (56)" in Porat's device "has a pair of elongated edge portions (60) that are *capable of* being inserted into a tubular tissue," thus corresponding to the claimed "elongated edge portions" which together define the "opening" in the "first grasping plate" of the present invention.

Applicants strongly assert that Porat does not disclose or contemplate that the "portion (60)" therein is "*configured to be inserted into a tube of the tubular tissue for grasping the tubular tissue,*" as required by the claimed "elongated edge portions." According to Porat, the portion (60) in the reference device is called a "catch arm," which has at least one catch member (62) arranged thereon for engaging with a latching means (53), in order that the device ("clamp (10)") can pinch a tubing (90) about its external circumferential surface. See, e.g., Figs. 2-9 and the associated description at column 9, lines 24-35 and column 10, lines 57-63 provided by Porat. As such, Applicants assert that it is not evident how the "catch arm (60)" in Porat's clamp device would be

"capable of" inserting into a tubular tissue for grasping the tubular tissue, like the claimed "elongated edge portion."

Since the aim of Porat is to "provide a pinch clamping device which may be laterally mounted onto a length of the tubing" (column 2, lines 13-15), Applicants assert that Porat teaches away from the claimed invention. In this regard, Applicants assert that one skilled in the art would not be remotely motivated to modify Porat's pinch clamp for grasping a tubular tissue by inserting a part thereof into the tubular tissue, as currently claimed. Thus, because Porat does not disclose each and every element of the claimed invention, arranged as in claims 1, 5-7, 9-10, 12-14 and 18-29, Applicants assert that Porat does not anticipate the claims.

The Examiner next rejects claims 2 and 3 under 35 U.S.C. §102(b) as being obvious over the aforementioned Porat, in view of the previously cited Mandel, et al. (US Publication No. 2002/0177863). Applicants respectfully disagree; however, Applicants amend the claims to expedite prosecution and to clarify the patentable aspects of the claims.

As discussed above, Porat fails to disclose or contemplate the claimed "elongated end portions" which are "configured to be inserted into a tube of the tubular tissue for grasping the tubular tissue", as recited in claim 1 (from which claims 2 and 3 depend). Applicants assert that Mandel fails to remedy the aforementioned deficiencies of Porat. Specifically, as Applicants pointed out in the previously submitted arguments, Porat merely pertains to a chevron shaped ligating clip which bears little structural resemblance with the claimed subject matter, or Porat's pinch clamp. See, e.g., Figs. 1 and 2 provided by Mandel.

Moreover, Applicants assert that it appears that the Examiner has only relied on Mandel for the purported teaching of an antimicrobial and/or antibiotic coating to the clip surfaces, namely the features recited in pending claims 2 and 3. Applicants assert that the combination of Porat and Mandel accordingly still fails to disclose or contemplate all the essential structural features of the claimed invention.

Furthermore, Applicants assert that the novel structural features of the claimed invention also attain significant effects over the cited references. In particular, as Applicants emphasized in the previously submitted arguments, the claimed invention provides multiple ways to safely grasp a tubular tissue, including: (1) grasping a tubular tissue by inserting an "elongated end portion" of a first grasping plate into said tubular tissue and further moving the second grasping plate close to the first grasping plate to grasp the tissue more stably (e.g., Example 4 at [00141] in the specification

and Figure 11); and (2) using the retaining portion of the first grasping plate and the covering portion of the second grasping plate to grasp a tubular tissue at one point, and using the tissue grasping space formed by the recessed portion of the first grasping plate and the curved portion of the second grasping plate at another point, to stably grape the tubular tissue (Example 3 at [00139] in the specification and Figure 10). By contrast, neither Porat nor Mandel teach a surgical holder for grasping a tubular tissue using the insertion means (1) as previously discussed, let alone a structure that provides two means (1) and (2) to grasp a tubing.

In view of the foregoing, Applicants assert that the claimed invention clearly involves an inventive step over the cited references.

Dependent claims 2-3, 7, 9-10, 12-14, and 18-29 variously depend from independent claims 1, 5 and 6, so Applicants assert that dependent claims 2-3, 7, 9-10, 12-14, and 18-29 are differentiated from the cited references for the same reasons as set forth above, in addition to their own respective features.

In view of the above remarks and amendments, Applicants respectfully submit that all pending claims properly set forth that which Applicants regard as their invention and are allowable over the cited references. Accordingly, Applicants respectfully request allowance of the pending claims. The Examiner is invited to telephone the undersigned at the Examiner's convenience, if that would help further prosecution of the subject Application. Applicants authorize and respectfully request that any fees due be charged to Deposit Account No. 19-2814.

Respectfully submitted,



Howard I. Sobelman, Reg. No. 39,038

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**SNELL & WILMER L.L.P.**  
400 E. Van Buren  
One Arizona Center  
Phoenix, Arizona 85004  
Phone: 602-382-6228  
Fax: 602-382-6070  
Email: [hsobelman@swlaw.com](mailto:hsobelman@swlaw.com)